IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.532 OF 2006

In

APPEAL NO.92 OF 2006

In

NOTICE OF MOTION NO.134 OF 2003

In

SUIT NO.764 OF 2002

ITC Limited & Ors. : Appellants

(Orig. Plaintiffs)

V/s.

Shri Sukhkarta Finance & Leasing Pvt. Ltd. & Ors. : Respondents

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Mr.N.H.Seervai, senior counsel, with Mr.P.P.Paul i/b. M/s.Nanu Hormasjee & Co., for the appellants.

Mr.D.D.Madon, senior counsel, with Mr.Rahul Narichania and Mr.Sharan Jagtiani i/b. M/s.Mulla & Mulla & Craigie Blunt & Caroe for respondent Nos.2 to 6 & 8 to 10.

Mr.A.Y.Bookwala with Mr.Berjis Colabawala i/b. M/s.Paras Kuhad & Associates for respondent No.9.

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CORAM : R.M.LODHA & S.A.BOBDE,JJ.

DATE : SEPTEMBER 11, 2006.

P.C.

1. We heard Mr.N.H.Seervai, senior counsel, for the appellants-applicants for more than two hours.

2. By the order dated 8.12.2005, the learned Motion Judge disposed of three Notices of Motion, being Notice of Motion Nos.727 of 2002, 1740 of 2002 and 134 of 2003. The present Appeal No.92 of 2006 arises out of disposal of Notice of Motion No.134 of 2003. In that Motion, the plaintiffs prayed, by way of an interlocutory order, that defendant Nos.2 to 6 and 8 to 10 be directed to deposit Rs.2 crores in this Court in respect of 15 Sulzer Machine transaction.

3. The appeal has been admitted on 20.2.2006. Now by way of this Notice of Motion, the appellants pray that respondent No.2 and/or respondent No.10 be directed to deposit a sum of Rs.2,00,00,000/- in this Court or otherwise secure to the satisfaction of this Court.

4. The relief is founded on the disclosure affidavit of defendant No.2 wherein, according to the plaintiffs, the said defendant admitted that a sum of Rs.2 crores is held by defendant No.10 in trust for the respondent - Modern Syntex (India) Ltd.

5. With the assistance of the senior counsel for the appellants, we perused various documents referred to by him, including the Writ Petition and the documents annexed thereto said to have been filed by M/s.Modern Syntex (India) Ltd., before the Rajasthan High Court and 19 letters from pages 973A to 994.

6. Having considered the entire material on record, prima facie, we find it difficult to hold that the sum of Rs.2 crores lying with defendant No.10 (allegedly in trust for M/s.Modern Syntex (India) Ltd.) belongs to the estate of Chitalias. At this stage, therefore, we are satisfied that the appellants are not entitled to any interim relief as prayed for in the Notice of Motion.

7. Notice of Motion is dismissed accordingly.

8. Certified copy expedited.

R.M. LODHA, J.

S.A. BOBDE, J.